



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 CRIMINAL WRIT PETITION NO. 863 OF 2024

JITENDRA GULABRAO VALKE AND OTHERS

VERSUS

ASHA JITENDRA VALKE

...

Mr. Latange Vijay Prabhakarrrao, Advocate for the Petitioners

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CORAM : Y. G. KHOBRAGADE, J.

DATED : 27/11/2024.

P. C. :

1. Heard Mr. Latange, the learned counsel for the petitioners at length.

2. By the present petition the petitioners put-forth prayer clause-B as under:

“B. The proceeding in R.C.C. No.432 of 2023, pending before the Hon’ble Court of Addl. C.J.M. (Court No.8), Ahmednagar, District Ahmednagar, for the offences U/Sec. 420, 494 r/w/sec. 34 of the Indian Penal Code may kindly be quashed and set aside.”

3. Needless to say that the marriage of petitioner No.1 and the sole respondent was solemnized on 21/04/2007 as per Hindu customs and rites. The respondent / wife filed a proceeding

bearing RCC No.432 of 2023 and alleged that during subsistence of her marriage, petitioner No.1 / her husband solemnized second marriage with the original accused No.2. Though accused Nos.3 to 10 were having knowledge about existence of first marriage, with their help the second marriage was solemnized on 09/02/2017. So also her husband / accused no.1 uploaded photographs of the second marriage on Facebook. Therefore, the accused / petitioners have committed an offence under Section 494 read with Section 34 of IPC.

4. After recording verification on 20/06/2023 the learned Additional Chief Judicial Magistrate passed an order and issued process as against the petitioners / original accused for the offence punishable under Sections 494 and 420 read with Section 34 of IPC.

5. Mr. Latange, the learned counsel appearing for the petitioners canvassed in vehemence that the respondent / complainant has not made any averment in the complaint that respondent Nos.3 to 10 were present in the second marriage and they have aided any kind while performing the second marriage. However, the respondent made a false and frivolous allegation with an intention to harass the petitioner / original accused and continuation of

such proceeding is amount to abuse of process of law. Therefore, prayed to quash and and set aside the proceeding. In support the submission, the learned counsel appearing for the petitioners placed reliance on case of **S. Nitheen and others vs. State of Kerala and another, 2024 DGLS (SC) 512 equivalent 2024 (8) SCC 706**, wherein the Hon'ble Apex Court held that the pre-charge evidence led in support of claimant would reveals that accused No.3 & 4 were not even alleged to be present at the time of such marriage. Therefore, the offence under Section 494 of IPC is not established by an iota of evidence.

6. In case in hand, the respondent / complainant made a specific statement in her complaint that during subsistence of her marriage, her husband / accused No.1 solemnized second marriage with accused No.2 and accused Nos.3 to 10 aided while solemnization of marriage. Accused no.1 uploaded photographs of his second marriage on the Facebook. Not only this when the respondent / complainant visited at the house of accused No.1 and confirmed that accused No.2 is cohabiting with accused No.1 as his wife. The complainant further alleged that accused Nos.3 to 10 were having knowledge about existence of first marriage of her husband / accused No.1. The complainant further made a statement that accused Nos.3 to 10 were actively participated

during the course of solemnization of second marriage between accused Nos.1 and 2. Therefore, I do not find that the petitioners have made out a substantial case to quash and set aside the proceeding pending on the file of the learned Additional Chief Judicial Magistrate, Ahmednagar. Accordingly the petition is dismissed and disposed of.

(Y. G. KHOBRAGADE, J.)